IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.479 OF 1987

The State of Maharashtra ...Appellant
Vs.
Pandharinath Ambuji Dadmise
(since deceased) through
legal representatives ...Respondents

WITH
FIRST APPEAL NO.489 OF 1987

The State of Maharashtra ...Appellant
Vs.
Tukaram Bhagwan Gulve & Anr. ...Respondents

Mr K.K. Tated, A.G.P. for the Appellant in both the Appeals.
None for the Respondents in both the Appeals.

CORAM : ABHAY S. OKA, J.

DATE : APRIL 25, 2006.

JUDGMENT:

1. Heard Shri Tated, learned A.G.P. for the State Government. None appear for the Respondents. The challenge in these Appeals is to the Judgment and Award dated 03rd June, 1985 passed by the learned Joint Civil Judge, Senior Division, Solapur in references under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The present Appeals arise out of Land Acquisition Reference Nos.88 of 1984 and 98 of 1984. Group of thirty-three Land Acquisition References were decided by a common judgment.

2. Notification under section 4 of the said Act was issued on 03rd August, 1971 and awards were made under section 11 of the said Act on 13th February, 1976. The Reference Court has fixed the market value of the acquired land in both the cases at the rate of Rs.5,000/- per hectare.

3. Record shows that against the common judgment delivered in these thirty-three Land Acquisition References, numbers of First Appeals were filed by the State Government including First Appeal No.415 of 1987. The papers in First Appeal No.415 of 1987 show that a Division Bench of this Court dismissed the Appeal by judgment and order dated 21st February, 1990.

4. The learned A.G.P. appearing for the State Government submitted that the rate awarded by the Reference Court is on the higher side. He pointed out that the award under section 11 of the said Act in both the cases is prior to 30th April, 1984 and hence the Trial Court has committed an error by granting benefit of section 23(1-A) of the said Act to the Respondents in both the cases.

5. I have considered the submissions. In the thirty-three Land Acquisition References which were decided by the common judgment, the lands were divided into four categories jirayat, seasonal bagayat, perennial bagayat and malai. The Reference Court relied upon a decision in Land Acquisition No.180 of 1976 in respect of a comparable land and fixed the market value of jirayat lands at the rate of Rs.2,000/- per Are which is equivalent to Rs.5,000/- per hectare. As stated earlier, the companion Appeal in which the challenge was to the said common judgment has been dismissed by the Division Bench of this Court. Hence, no interference is called for so far as the market value fixed by the impugned judgment and order is concerned.

6. So far as the second submission of Shri Tated is concerned, in view of decision of the constitution bench of the Apex Court in the case of K.S. Paripoornan Vs. State of Kerala & Ors. [(1994) 5 Supreme Court Page 593) the Respondents were not entitled to claim benefit of section 23(1-A) of the said Act the award under section 11 of the said Act was made prior to 30th April, 1984. In the companion matter, the Division Bench has decided the Appeal much prior to the aforesaid decision of the Apex Court.

Therefore, the decision of the Apex Court will have to be applied and the impugned awards will have to be modified.

7. Hence, I pass the following order:

FIRST APPEAL NO.479 OF 1987

(i) Appeal is partly allowed with no orders as to costs. The impugned judgments and awards are modified to the extent that the original claimants will not be entitled to statutory benefit under section 23(1-A) of the Land Acqusition Act, 1894. However, they will be entitled to benefit of section 23(2) and section 28 of the said Act.

(ii) Reference Court will complete the exercise of calculating the compensation amount payable to the Respondents within period of four months from the date of receipt of writ of this order.

FIRST APPEAL NO.489 OF 1987

(i) Appeal is partly allowed with no orders as to costs. The impugned judgments and awards are

modified to the extent that the original claimants will not be entitled to statutory benefit under section 23(1-A) of the Land Acqusition Act, 1894. However, they will be entitled to benefit of section 23(2) and section 28 of the said Act.

(ii) Reference Court will complete the exercise of calculating the compensation amount payable to the Respondents within period of four months from the date of receipt of writ of this order.

JUDGE